



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION

Change of: Purpose of Use, Season of Use, Place of Use, and Point of Diversion
WRTS File No.: CS4-ADJ73029

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
December 1908			Chumstick Creek Adjudicated Certificate No. 29(A)

NAME

BCSCBN INC c/o Mark Peterson, Attorney

ADDRESS/STREET	CITY/STATE	ZIP CODE
103 Palouse Street, Suite 5	Wenatchee, WA	98801

PUBLIC WATERS TO BE APPROPRIATED

SOURCE

A Well

TRIBUTARY OF (IF SURFACE WATERS)

Columbia River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
	158	50.5

QUANTITY, TYPE OF USE, PERIOD OF USE

158 gallons per minute (gpm), 50.5 acre-feet per year (ac-ft/yr) for year-round community domestic supply.
The consumptive quantity shall not exceed 19 ac-ft/yr.

LOCATION OF WITHDRAWAL

APPROXIMATE LOCATION OF WITHDRAWAL

200 feet west and 1400 feet south from the northeast corner of Section 30, T. 17 N., R. 23 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE	WRIA	COUNTY
NE¼ Section 30, T. 17 N., R. 23 E.W.M.	30	17N.	23 EWM	40	Kittitas
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		
17-23-30010-0006	46.9382	-119.9864	NAD 83 HARN		

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal]

The place of use of this water right is approximately 75.61 acres lying east of Huntzinger Road (also known as Wanapum Rd) and south of Interstate-90 and west of a line starting at the NE corner of Section 30, T. 17 N., R. 23 E.W.M. thence S 1-23-19 E 1341.3 feet to the true point of beginning, thence S 32-57-0 W 523.1 feet, thence S 14-56-40 W 863.8 feet, thence S 15-6-45 W 396 feet, thence S 13-0-51 E 603.9 feet, thence S 14-36-46 W 333 feet, thence S 14-59-3 W 195.3 feet, thence S 8-30-35 E 626.8 feet, thence S 18-29-55 E 589.4 feet to the southern boundary of said section 30, all along the boundary of Grant Co. PUD #2 lands, within the E½ Sec. 30, T. 17 N., R. 23 E.W.M.

RCW 90.03.386 may have the effect of revising the place of use of this water right to the service area described in the most recent Water System Plan/Small Water System Management Program approved by the Washington State Department of Health, so long as the Vantage Bay Resort Water System remains in compliance with the criteria in RCW 90.03.386(2). If the criteria in RCW 90.03.386(2) are not met, the place of use of this water right reverts to the last place of use described by the Department of Ecology in Chumstick Creek Adjudicated Certificate No. 29.

DESCRIPTION OF PROPOSED WORKS

A community domestic water system supplied by a well, potable water storage tanks, water transmission mains, a non-potable mitigation storage pond, and a wastewater treatment facility to serve up to 310 lots at full build-out.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
March 1, 2010	March 1, 2015*	March 1, 2018*

*This project is operating under a Determined Future Development Plan which requires that affirmative progress must be made toward the planned project within 15 years of the last beneficial use of water. (DFD fixed on 3/31/06 and last beneficial use of water occurred in 2002.)

FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

**TRUST WATER RIGHT
REPORT OF EXAMINATION**
Change of Purpose and Place of Use
WRTS File #: CS4-ADJ73029

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
December 1908			Chumstick Creek Adjudicated Certificate No. 29 (B)

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM

BCSCBN INC., c/o Mark Peterson, Attorney

ADDRESS/STREET	CITY/STATE	ZIP CODE
15 West Yakima Avenue, Suite 200	Yakima, WA	98902-3452

TRUST WATER RIGHT ATTRIBUTES

SOURCE

Eagle Creek, Chumstick Creek, Wenatchee River, and Columbia River

TRIBUTARY OF (IF SURFACE WATERS)

Columbia River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
0.116		19 acre-feet

QUANTITY, TYPE OF USE, PERIOD OF USE

19 acre-feet per year for instream flows and mitigation of out-of-stream use in the secondary reach from April 15 to September 30 in the following quantities:

	June	July	August	September	Total
cfs	0.062	0.116	0.088	0.0471	
acre-feet	3.7	7.1	5.4	2.8	19

The consumptive quantity shall not exceed 19 acre-feet per year.

HISTORIC POINT OF DIVERSION OR WITHDRAWAL

APPROXIMATE LOCATION OF HISTORIC DIVERSION

200 feet east and 200 feet north from the west quarter corner of Section 28, T. 25 N., R. 18 E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
SW1/4, SW1/4, NW1/4	28	25 N.	18 E	45	Chelan
PARCEL NUMBER	LATITUDE	LONGITUDE		DATUM	
251828200150	47.6358	-120.6110		NAD 83 HARN	

AFFECTED REACHES -- DESCRIPTION OF PLACE OF USE

[See Attachment 1 for map of the trust water right location]

The secondary reach begins at the historic point of diversion on Eagle Creek 2.1 miles upstream of the confluence with Chumstick Creek. The secondary reach then extends 1.86 miles down Chumstick Creek to the confluence of the Wenatchee River and then 23.5 miles to the confluence with the Columbia River at River Mile 468.5. It then extends down the Columbia River 48.5 miles to the approximate location of the new point of withdrawal adjacent to the Columbia River at river mile 420, located in the NE¼ Sec. 30, T. 17 N., R. 23 E.W.M.

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
March 1, 2010	Permanent

PROVISIONS

Note: All of the following provisions apply to the BCSCBN, Inc. portion (Chumstick Creek Adjudicated Certificate No. 29(A)) of the proposed change. Provision 10 also applies to the trust portion (Chumstick Creek Adjudicated Certificate No. 29(B)) of the proposed change.

Wells, Well logs and Well Construction Standards

1) WELL HEAD PROTECTION

In accordance with WAC 173-160, wells shall not be located within certain minimum distances of potential sources of contamination. These minimum distances shall comply with local health regulations, as appropriate. In general, wells shall be located at least 100 feet from sources of contamination. Wells shall not be located within 1,000 feet of the boundary of a solid waste landfill.

2) WELL CONSTRUCTION STANDARD

All wells constructed in the state shall meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned.

3) WELL TAG

All wells shall be tagged with a Department of Ecology unique well identification number. This tag shall remain attached to the well. Please submit water measuring reports referencing tag No. BAJ036 for the current project well and the tag numbers of any wells that may be added to the project in the future. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision.

4) ACCESS PORT

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

Measurements, Monitoring, Metering and Reporting

5) METER INSTALLATION

An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

6) RECORD WEEKLY, REPORT ANNUAL TOTALS

Water use data shall be recorded weekly and maintained by the property owner for a minimum of five years. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to the Department of Ecology by January 31st of each calendar year.

During drought years when mitigation is provided by the applicant in lieu of curtailing use in favor of instream flows, water use and mitigation water provided shall be recorded daily during periods of interruption. A mitigation compliance report will be provided by January 31st of each year following a drought year evaluating the effectiveness of the mitigation.

7) METERING RULE DESCRIPTION AND PETITION INFO

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements".
<http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

Municipal Supply and Public Water Systems

8) HEALTH AND ECOLOGY APPROVAL REQUIRED

Prior to any new construction or alterations of a public water supply system, the State Board of Health rules require public water supply owners to obtain written approval from the Office of Drinking Water of the Washington State Department of Health. Please contact the Office of Drinking Water prior to beginning (or modifying) your project at Eastern Drinking Water Operations, 1500 West Fourth Avenue, Suite 305, Spokane, WA 99204, (509) 456-3115.

Specific mitigation has been proposed for this project by the applicant and accepted by Ecology following consultation with Department of Health and SEPA review. The purpose of the mitigation is to prevent impairment of existing water rights and instream flows, while maintaining public water system reliability during times when use of water under this water right would otherwise be curtailed in favor of instream flows. Demonstration that the mitigation requirements described herein (along with all applicable SEPA MDNS mitigation requirements) have been satisfied is to be documented in the water system planning documents submitted to Health and Ecology.

Schedule and Inspections

9) PURPOSE OF USE

Please be aware the definitions of "municipal water supplier", "municipal water supply purposes", and the inchoate water right "in good standing" provision in the Municipal Water Law of 2003 have been deemed unconstitutional by King County Superior Court. Ecology has appealed this decision to the Washington State Supreme Court. A final decision on the appeal to the Supreme Court may not be issued for some time. Therefore, your water rights purpose of use is considered to be "community domestic" pending the final outcome of the litigation. If the law is reinstated on appeal, your community domestic right will automatically be for municipal water supply again by operation of law. From that time forward, you would have the choice of requesting Ecology to conform your document by having the words "community domestic" changed to "municipal water supply".

10) TRUST WATER CONVEYANCE REQUIREMENT

The intent of the trust water conveyed to Ecology in this decision is for Ecology to permanently manage and protect the quantities described herein for instream flow purposes and mitigation of community domestic supply uses downstream at Vantage Bay Resort. Ecology's management of the trust water right will ensure water is conveyed downstream and available for the project. Before beginning construction on the project, BCSCBN Inc. shall convey their interest in this water right consistent with the trust authorization. Such conveyance shall be made on a form prescribed by Ecology.

11) AUTHORITY TO ACCESS PROJECT

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

12) PROJECT COMPLETION

The water right holder shall file the notice of project completion when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The *Superseding Certificate* will reflect the extent of beneficial use within the limitations of the change authorization. Elements of the project completion inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and compliance with provisions.

General Conditions

13) EASEMENT RIGHT-OF-WAY

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

14) CONSERVATION

Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

15) PLACE OF USE AT PROJECT COMPLETION

It is expected that new parcels will be created under county-approved subdivision plans prior to project completion. A portion of the current northernmost parcel (17-23-30010-006) is served by Certificate No. 4042-A and is expected to continue to be served by that right in the future. At project completion, the permit writer will determine whether to exclude the northernmost parcel (or portion thereof) from this place of use if it is served solely by another water right.

16) CONSUMPTIVE USE

Consumptive use under Change Authorization CS4-ADJ73029 shall not exceed 19 ac-ft. The Vantage Bay Resort is initially limited to a total diversion of 19 ac-ft under this authorization to ensure that there is no enlargement of this right, no impairment of existing water rights, and no detriment to the public interest. Diversions up to the full tentative determination of 50.5 ac-ft will be allowed if the water right holder demonstrates that up to 31.5 ac-ft of return flows from the project can be relied upon for continued growth of the proposed public water system. Ecology will make this determination in cooperation with the Department of Health through review of water and sewer planning documents and SEPA review. These planning documents must describe the coordinated monitoring and management of the proposed water and sewer utilities to ensure that the consumptive use limit will be observed in perpetuity. Formation of a water district or service of the area by a city, town, or public utility district with sufficient technical, operational and financial capacity to manage the system is also required. Homeowner covenants that limit occupancy or duration of use and limit lawn size can also be used to help demonstrate project management. Ecology would approve or deny the diversion of the additional 31.5 ac-ft through an Administrative Order.

Quantity Limits, Flow and Regulation

17) COLUMBIA RIVER REGULATION

For the period from October 1 to April 14 each year, this authorization is subject to the following minimum flows as specified in WAC 173-563-040, WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 million acre-feet (MAF) or less, and when gaged flows are predicted by the BPA 30-Day Power Operation Plan to violate the following minimum flow provisions at:

Primary Control Station(s): Wanapum Dam
River Mile(s): 415.8

Minimum Average Weekly Flows
Columbia River Projects
(1,000 cubic feet/second)

PRIMARY CONTROL STATION: RIVER MILE:	Chief Joseph*	Wells/ Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	McNary	John Day	The Dalles
	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

* For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

Use of water under this authorization shall be contingent upon the water right holder's use of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

Use of water under this authorization can be expected to be curtailed at least once in every 20 years.

18) MITIGATION OF COLUMBIA RIVER REGULATION

Use of water under this right shall not be curtailed in favor of Columbia River instream flows provided the mitigation described herein is provided. The following sources of mitigation (or combinations thereof) may be used following approval by Ecology and Department of Health:

1. Execute a contract with an upstream municipal entity to deliver water to the Columbia River in the amounts calculated for mitigation of continuous withdrawals from the Vantage Bay wells. This contract could be terminated only with Ecology and Department of Health approval if adequate replacement water is substituted.
2. Store on-site and release non-potable water in the amounts calculated for mitigation of continuous withdrawals from the Vantage Bay wells.
3. Acquire and transfer additional permanent water rights in the prescribed mitigation amounts.

When notified by Ecology of pending interruptibility, the owner of the Vantage Bay Resort shall enroll in Ecology's drought notification system (e.g. weekly 1-800 number or online notices) and manage mitigation water and diversions so no negative impact to the Columbia River occurs as a result of continued operation of the water system.

Vantage Bay proposes a phased approach to development. The first phase would consist of 145 ERUs. The phased approach achieves several objectives. It keeps the initial authorized demand within the historic consumptive quantities of the right. It reduces the initial mitigation requirement. Based on Phase 1 demand projections, reductions in use to in-house use only during periods of interruption (e.g. 200 gpd/connection) and the expected period of interruptibility, approximately 2 acre-feet of mitigation water is anticipated to be needed.

The phased development plan provides time to collect data on actual usage patterns for the system to provide a basis of revising mitigation requirements and restrictions on the use of nonconsumptive water historically used under the right. In addition to the mitigation sources described above, wastewater discharge of up to 31.5 acre-feet may also be considered through the Administrative Order described in Provision 17 above.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or the public welfare.

Therefore, I ORDER approval of the recommended change under Change Application No. CS4-ADJ73029, subject to existing rights and the provisions listed above.

You have a right to appeal this ORDER. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

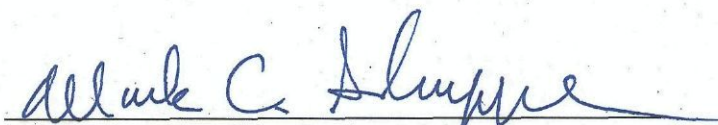
The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Mark C. Schuppe, Acting Section Manager
Department of Ecology
Water Resources Program
15 W Yakima Ave Ste 200
Yakima WA 98902

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

Signed at Yakima, Washington, this 17th day of April 2009.



Mark Schuppe, Acting Section Manager
Water Resources Program
Central Region Office

BACKGROUND

Description and Purpose of Proposed Change

This report describes one of two water right changes intended to supply water to the Vantage Bay Resort. Change Application No. CS4-ADJ73029 was submitted on August 21, 2006 by Tate's Landing and Development Company, which has been changed to BCSCBN Inc. The applicant proposes to transfer a surface water right from Eagle Creek in Chelan County, to a location 1 mile south of the town of Vantage, along the Columbia River. A map of the proposed location is shown in Attachment 1. BCSCBN Inc. proposes to use this water right for the community domestic supply of the Vantage Bay Resort.

In conjunction with this change, BCSCBN Inc. also submitted Change Application No. CS4-23192C, which proposes to transfer a surface water right from the Monse town site in Okanogan County downriver to the Vantage Bay Resort for additional supply. The report for this associated water right is available upon request.

Both of these changes propose to transfer water from upstream points of diversion downstream to be withdrawn from a well near the town of Vantage. The well is located approximately 450 ft from the Columbia River and is and hydraulically connected to the river. Both of the rights proposed for transfer are for seasonal irrigation and would be changed to year round community domestic supply. The resort plans to phase construction to ensure a reliable water supply. See the "Impairment Considerations" section below for more details.

BCSCBN Inc. has also applied to place the original water rights from both transfers into the Trust Water Program for the intervening stretch of river between the original points of diversion and the proposed point of withdrawal. The Trust Water Program has the ability to protect these water rights for the purpose of enhancing instream flows and ensure the water rights are not diverted by intervening water users between the historic and new points of withdrawal.

These applications are being priority processed by the Department of Ecology (Ecology) under WAC 173-152-050(3)(a) based on enhancement of the environment derived from transferring water downstream.

Attributes of the Certificate and Proposed Change

Table 1: Summary of Proposed Changes to Water Right No. S4-ADJ73029
(Chumstick Creek Adjudicated Certificate No. 29).

Attributes	Existing	Proposed
Name	Charles J. and Helen M. Rockwell	BCSCBN Inc.
Priority Date / Date of Application for Change	December 1908	August 18, 2006
Instantaneous Quantity	0.50 cfs	224 gpm
Annual Quantity	90 ac-ft/yr	90 acre-ft/yr
Source	Eagle Creek	A Well
Point(s) of Diversion/Withdrawal	SW1/4, SW1/4, NW1/4, Sec. 28, T. 25 N., R.18 E.W.M.	NE1/4, Sec. 30, T. 17 N., R. 23 E.W.M.
Purpose of Use	Irrigation of 30 acres	Community Domestic Supply
Period of Use	April 15 through September 30	Year-round
Place of Use	S1/2NE1/4, Sec. 29, T. 25 N., R.18 E.W.M.	E1/2 Sec. 30, T. 17 N., R. 23 E.W.M.

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in place of use, season of use, purpose of use, and point of diversion/withdrawal.

- **Public Notice**

BCSCBN Inc. drafted a public notice to describe both changes (CS4-ADJ73029—this report and CS4-23192C). The notice was sent to three publishing entities to be published for two weeks. Quad City Herald (conglomerate of the Brewster Herald, Pateros Reporter, and the Bridgeport Chief) published the notice on September 14th and 21st of 2006. Prairie Media (The Leavenworth Echo and Cashmere Valley Record) published the notice on August 13th and 20th of 2006. The Daily Record in Ellensburg published the notice on September 9th and 16th of 2006. No protests or comments were received during the 30 day comment period following the last day of each publication.

- **State Environmental Policy Act (SEPA)**

On July 3, 2006, Todd Lolkus of Land Surveying/BCSC applied to have the project area rezoned from Forest and Range 20 to Planned Unit Development. Kittitas County acted as lead agency and issued a Mitigated Determination of Nonsignificance (MDNS) on August 29, 2006.

As part of the review for this report, Ecology is required to verify that the SEPA review adequately addressed the proposed project. Ecology determined that two aspects of the current project were not addressed in the SEPA review. At the time Kittitas County issued their MDNS, Tate's Landing had not specifically identified their water source and the associated permits. Tate's Landing proposes to transfer water from Chelan and Okanogan Counties to Vantage in Kittitas County. The nature of such transfers may also require on-site storage or other measures to mitigate for times of interruption on the Columbia River. For these reasons, Ecology worked with the applicant to revise the checklist to provide an opportunity for other agencies and local governments to comment on the project. Based on the revised checklist, Ecology issued a Revised MDNS. The Revised MDNS incorporated all of Kittitas County's 2006 MDNS requirements and added a Source Reliability Mitigation Plan requirement. The Mitigation Plan describes the conditions outlined in Provision 19 of this decision.

Ecology received one comment on its Revised MDNS from Ecology's Shorelands and Environmental Assistance Program. The comment identified that Kittitas County's 2006 MDNS requirement # III.G. had not been complied with to-date.

"On-site drainage features associated with construction shall be designed such that wetlands are not dewatered or impacted."

The comment from the Shorelands Program identified that impact could not be assessed without baseline monitoring of the wetlands. Ecology addressed this comment in Provision 9 of this decision by requiring demonstration of compliance of all SEPA mitigation requirements at time of water system plan approval (e.g. before houses could be served with water from the development).

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp*.

The Supreme Court has held that a prior perfected water right for a seasonal use of water may be changed to year-round use if the change is not detrimental or injurious to existing rights. *R.D. Merrill v. PCHB*.

The holder of the right may change the manner or purpose of use. The Washington State Supreme Court held in *Merrill* that a water right holder may change the season of use when related to a change in the purpose of use of a water right. A change in the purpose of use can be approved only after the water has first been applied to beneficial use.

RCW 90.03.386(3) requires a municipal water supplier to apply cost-effective water conservation measures as part of its water system planning. The water supplier must also evaluate the effects of delaying the use of inchoate water rights before it may increase use of those inchoate rights.

RCW 90.03.320 requires Ecology to consider the public water supplier's use of conserved water when establishing a surface or ground water right construction schedule.

The authority to change a point of diversion to a point of withdrawal is derived from RCW 90.03.380, RCW 90.44.020-030, RCW 90.44.100 and RCW 90.54.020(9). RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed if it would not result in detriment or injury to other water rights. Additionally, moving the point of diversion to a groundwater withdrawal requires compliance with the groundwater code (RCW 90.44), including a finding that there be no detriment to the public welfare and that the source of the existing diversion and the proposed point of withdrawal be part of the same water source.

RCW 90.03.386(2) states that a municipal water supplier may change its service area through the water system plan approval process. As long as the municipal water supplier is in compliance with the approved plan, the place of use for the water right is the service area of the plan.

RCW 90.44.055 requires Ecology to consider the benefits and costs, including environmental effects, of a water impoundment or a resource management technique when proposed as part of an application for a water right change or transfer.

RCW 90.14.140(2)(c) states that a water right not used for more than 5 years is not relinquished if it is claimed for a determined future development to take place within 15 years of the last beneficial use of water under the water right. In addition, a series of court cases provide additional guidance in assessing such a plan. In order to be valid, a determined future development plan must satisfy a series of tests as established in *R.D. Merrill Company v. Pollution Control Hearings Board*; *City of Union Gap and Ahtanum Ridge Business Park LLC v. Washington State Department of Ecology*; and *Protect Our Water v. Islanders for Responsible Water Management (Intervenors)*, *State of Washington, Department of Ecology, and King County Water District No. 19*.

RCW 90.42.080(1)(a) provides that the state may acquire all or portions of existing water rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights.

INVESTIGATION

History of Water Use

The original water right for this change is appurtenant to 30 acres located along Eagle Creek; a tributary of Chumstick Creek, roughly four miles northeast of Leavenworth, WA. This water right was adjudicated in the early 1980's, at which time Chelan County Superior Court issued Certificate No. 29 to Charles and Helen Rockwell. This Class 13 water right has a priority date of December 1908 and authorizes the diversion of 0.5 cfs, 90 ac-ft/yr from Eagle Creek for the irrigation of 30 acres. Ecology staff and the applicant's consultant reviewed the priority system and stream flow data published in the Report of Referee, Chumstick Adjudication. The Rockwell's right was consistently available for diversion. Sufficient water also appears to be available to meet the nondiversionary stock water right of 0.05 cfs in Eagle Creek with a priority date of 1900. The investigation below focuses on the recent 20 year period following the Court's findings.

Extent and Validity

Ecology's review of the extent and validity of the water right proposed for change included a site visit, personal interviews, aerial photo review, and technical analyses. An official survey of the property was completed and stamped on January 20, 2006. Change Application No. CS4-ADJ73029 was submitted on August 17, 2006. A site visit was conducted on November 21, 2006 by Ecology employees Melissa Downs, Kelsey Collins, Tom Tebb, and Phil Crane. They were joined by Lisa Pelly of Washington Rivers Conservancy, project attorneys Mark Peterson and Tom McDonald, and Steve Bossow of WDFW. This site visit provided information on how the land was historically irrigated, the location of diversions, and the spatial relationship between Eagle Creek and the Rockwell property.

During the site visit it became clear that the property had not been irrigated recently and the last crop planted had been sparse. Power records were not available, so Ecology staff requested an interview with the previous owner's son, Steve Rockwell, to gain a better understanding of the property's irrigation history. Mr. Rockwell stated that the property was used to grow alfalfa for the family's livestock. The Rockwells maintained diversions that were gravity fed, and/or used pumps powered by gas/diesel engine and a power take-off (PTO)¹. The water delivery system consisted of one pump on each end of the property and an inlet hose of 3-4 inches in diameter. Water was applied by manually moving four-2.5 inch diameter black hoses with holes drilled in them.

System capacity could not be calculated since the motors and pumps were removed and salvaged. Annual water use was also difficult to estimate since the number of annual cuttings varied depending on the year. Steve Rockwell stated his father did not invest heavily in seed or irrigate aggressively. As his health deteriorated, Charles Rockwell irrigated less and less. The last season he irrigated was in 2002.

¹ Mr. Rockwell's pump diversions from Eagle Creek were de facto changes not authorized by Chumstick Creek Adjudicated Certificate No. 29.

Due to a lack of power records, metering data, or tax records associated with crop sales, Ecology Engineer, Dan Haller, performed a water use analysis for the Rockwell's property. Supporting information was mainly generated from the interview with Steve Rockwell, access to GIS layers, and analysis of aerial photos. Air photos from 1998 and 2005 showed that historic cultivation totaled approximately 21.2 acres. The Washington Irrigation Guide (WIG) was used to provide crop requirement information for alfalfa grown near Leavenworth, WA. However, based on the aerial photo review, site visit and Rockwell interview information, Mr. Haller concluded that the Rockwell's crops would not have used the full consumptive use requirement from the WIG. Mr. Haller estimated the highest total use from 1998 to 2002 to be 50.5 ac-ft/yr with a consumptive use of 19 ac-ft/yr. The engineering analysis is available upon request.

Since system capacity was not available, the peak instantaneous rate can be estimated through use of a reasonable rate per acre. The original rate per acre awarded by the Court in the adjudication was 0.167 cfs/acre (e.g. 0.5 cfs / 30 acres). For the 21.2 acres identified in the aerial photo review and a rate of 0.167 cfs/acre, approximately 158 gpm is a reasonable estimate of peak instantaneous rate.

Determined Future Development

The last beneficial use of Chumstick Creek Adjudicated Certificate No. 29 was in 2002. Therefore, the water right is subject to relinquishment unless a sufficient cause under RCW 90.14.140 applies for the period from 2003 to 2008. The applicant has asserted the determined future development exception to relinquishment.

Ecology evaluated each of the following criteria in its investigation:

- The project must be sufficiently complex as to require more than 5 years to complete;
- The plan must be determined and fixed within five years of the last beneficial use of the water;
- The party exercising the plan must have equity in the water right;
- The plan must remain fixed, and;
- Affirmative steps must be taken to implement the plan within 15 years.

Ecology evaluated the scope of the proposed project and found full buildout would include 310 residential units and associated lawns and gardens. The applicant's attorney, Mark Peterson, submitted a purchase and sale agreement between Tate's Landing Development Co., and Steve Rockwell that was signed on March 31, 2006. Equity interest in the water right was established within 5 years of the last beneficial use of water. No plan other than the intent to serve the Vantage Bay Resort was identified. Evaluation of affirmative steps within 15 years is an issue Ecology considered in setting the development schedule for the change authorization.

Water Rights Appurtenant to the Place of Use (Sec. 30, T. 17 N., R. 23 E.W.M.)

Table 2: Summary of Water Rights in Section 30, T. 17 N., R. 23 E.W.M.

Document	Stage	Priority Date	Qi (gpm)	Qa (af)	Use	Comments
G4-29290	New App	5/21/1987	600		Domestic, Future high density domestic, stockwater and	Filed by Ron Palelek, Place of use overlaps
GWC04042-A	Certificate	1/6/1960	100	70	Town Domestic	Place of use overlaps proposed change, Stockdale Well authorized
CG4-GWC04042-A	Change App	5/21/1987	100	70	Multiple Domestic	Inactive
CS4-23192C	Change App	8/18/2006	224	100	Municipal	Vantage Bay project
CS4-ADJ73029	Change App	8/18/2006	224	90	Municipal	Vantage Bay project, this ROE
WRC043179	Claim	8/7/1973			Domestic and Irrigation	Ground water

G4-29290 Application for ground water right:

The application was submitted by Ron and Joyce Palelek on May 21, 1987 for the withdrawal of 600gpm for multiple domestic, future high density development, stock water, and 85 acres of irrigation. The application overlaps the entire BCSCBN, Inc. Vantage Bay Resort proposed place of use, and includes two proposed wells within BCSCBN, Inc.-owned parcels (see Appendix A map). BCSCBN, Inc. did not acquire any interest in the application when they purchased the underlying parcels from Paleleks. Grant PUD purchased the remaining parcels in the proposed place of use, and their equity position in the application is unknown. Ecology does not have an assignment on file for this application to either BCSCBN, Inc. or Grant PUD.

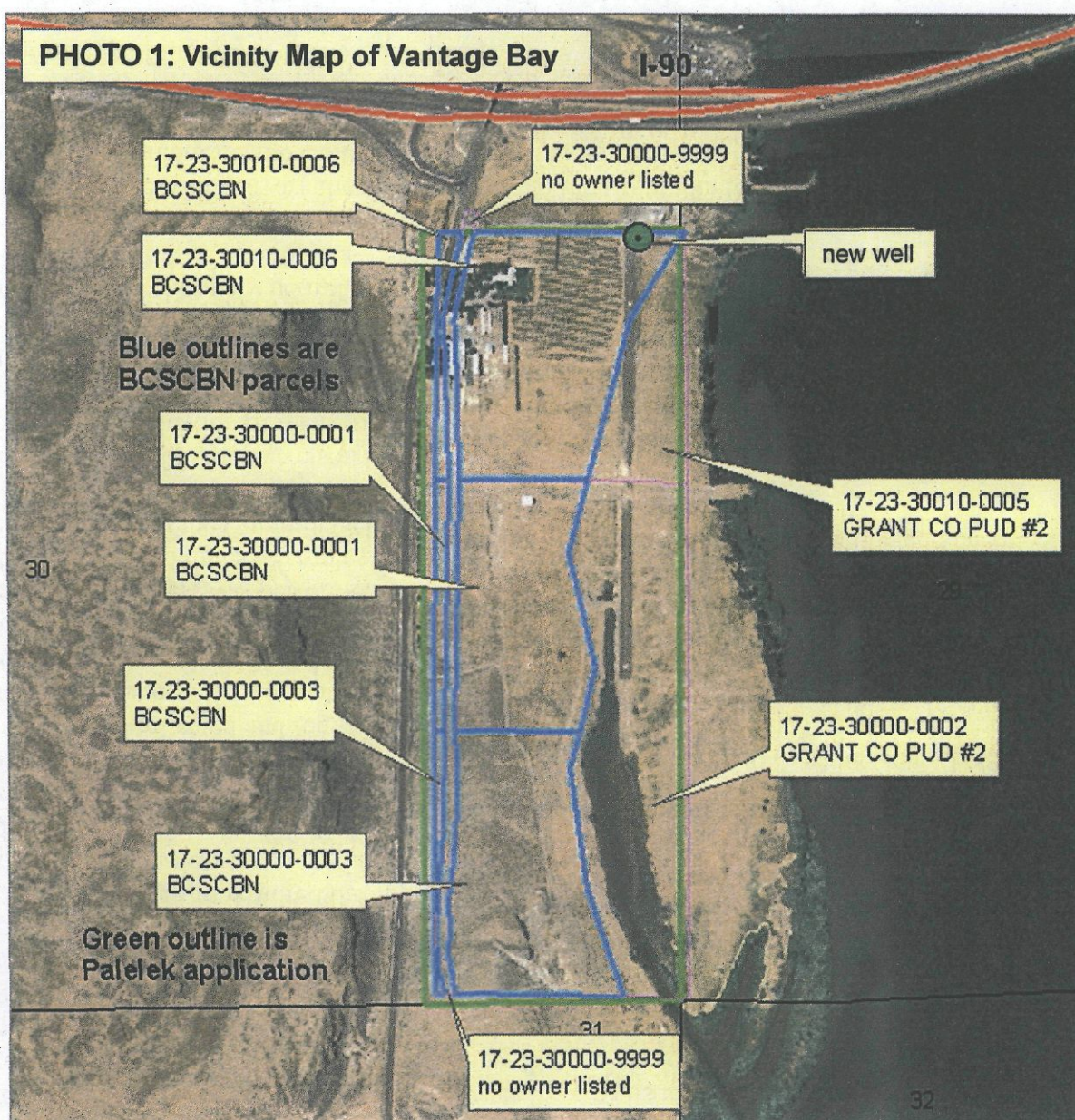
This application is referenced in litigation between Ecology and Paleleks regarding Certificate No. 4042-A. A settlement agreement for that lawsuit reads in part:

“Ecology agrees to process Paleleks application for a new water right, filed under No. G4-29290, in the normal course of business using whatever rules and information may be applicable at the time of processing, which may be an indefinite time in the future. Ecology may perform a new investigation of the application if necessary.”

Given the overlapping purposes and place of use of this new application and the proposed changes by BCSCBN, Inc., application G4-29290 may be redundant. A discussion of the approved BCSCBN, Inc. changes will be included in the file for G4-29290.

Certificate No. 4042-A Groundwater Certificate:

Certificate No. 4042-A authorizes 100 gpm and 70 acre-feet from a well in Section 30, T. 17 N., R. 23 E.W.M. for Town domestic supply throughout the year. The well (Stockdale Well) is located within the proposed place of use for this change. The place of use for Certificate 4042-A is the Vantage Water District, which overlaps this place of use. A portion of the northernmost parcel (17-23-30010-0006) is still used by the Paleleks as part of the purchase agreement between Paleleks and BCSCBN, Inc. Water use on that parcel appears in PHOTO 1 and is associated with Certificate No. 4042-A. BCSCBN, Inc., asserts that this use will continue to be associated with Certificate 4042-A in the future and has not included this use in their development water budget.



CS4-23192C Application for change from surface to ground water:

In conjunction with this change, CS4-23192 also proposes to change a surface water right from the Okanogan River to the Vantage Bay Resort project site (see companion ROE). Application No. CS4-23192C (e.g. Monse) will provide a portion of the Vantage Bay Resort water budget, totaling 33.4 acre-feet of consumptive use and 5.9 acre-feet of non-consumptive use. The applicant plans to use the consumptive portion of both rights to supply Phase 1 of construction. Once water use patterns in Phase 1 have been established, the applicant proposes to use the non-consumptive portion for the construction of Phase 2.

WRC043179 Short Form Claim:

The Ellensburg Boat Club submitted a claim describing irrigation and multiple domestic water use. No quantities are listed. The claim is immediately north of the proposed place of use and is not associated with this project.

Hydrologic/Hydrogeologic Evaluation

Change Application No. CS4-ADJ3029 proposes to transfer existing surface water from Eagle Creek to a point of withdrawal at the Vantage Bay Resort. According to Ecology's interpretation of RCW 90.03.380, RCW 90.44.100, RCW 90.54.020(9), and Ecology's Policy 2010 on Defining and Delineating Water Sources, the well is required to be in the "same source" as the original right. Eagle Creek is a tributary to Chumstick Creek, which is a tributary to the Wenatchee River, which is a tributary of the Columbia River. If the original right is no longer exercised, water continuing downstream is available for capture in or adjacent to the Columbia River.

The applicant proposes to capture surface water from wells in high hydraulic connection with the Columbia River. It is the burden of the applicant to show that the proposed well demonstrates high hydraulic connection to the Columbia River.

Vantage Bay Resort is located in an area where the geology is not well studied and there are few wells in the surrounding area. This lack of geologic information prompted Ecology to issue a preliminary permit on January 16, 2008. The permit required the applicant to drill a test well and conduct testing to characterize the aquifer parameters and assess the potential for capture of surface water. The applicant hired hydrologist Steve Nelson of RH2 Engineering, Inc to act on the permit and submit a report to Ecology.

On May 14, 2008, the applicant drilled a 244 ft deep well within 400 ft of the Columbia River shoreline. Chip samples were collected and logged at 5-foot intervals. On May 22, 2008 an automatic pressure transducer and datalogger was installed to continuously measure water level and temperature. On June 23, 2008, a short-term pump test was conducted on the well. This step test pumped the well at 50, 100 and 150 gpm for an hour each. On July 7 and 8, 2008 a 24 hour pump test was conducted at an average pumping rate of 150 gpm. A final maximum yield test was performed on July 31, 2008, in which the well was pumped at 200 gpm for 1 hour and 225 gpm for 45 minutes. Samples were taken for pH, conductivity, temperature, and chemical analyses from the well and from the Columbia River at the end of the 24-hour pump test.

On August 5, 2008, Steve Nelson submitted his report summarizing the work that had been done and his professional evaluation of the results. Ecology's hydrogeologists reviewed the report and expressed their concerns with this report's adherence to the requirements of the preliminary permit in a letter to Mr. Nelson dated September 23, 2008. Mr. Nelson responded to these comments by submitting a revised report on October 16, 2008. Ecology reviewed the amended report and issued a letter on October 24, 2008 approving the results of the preliminary permit.

The results of the consultant's report (including pump tests, water level monitoring, and chemical analyses) indicate that the well is hydraulically connected to the Columbia River. The exact timing at which pumping from this well intersects the Columbia River is not known, however, Mr. Nelson's hydrologic analysis indicates that the well can be managed like a diversion on the river. In the event that pumping must be curtailed, continued impacts on the Columbia River from the well cease within days to a week. This is consistent with the administrative framework on the Columbia River, where Ecology's instream flow rule is managed on a weekly basis. The preliminary permit and hydrologic analysis are available upon request.

Impairment Considerations

When considering the potential for impairment from the proposed change, Ecology considered intervening water users between the historic point of diversion and the proposed withdrawal location, the State's instream flow rule for the Columbia River (WAC 173-563), and adjacent wells:

Changing the water right downstream and trusting the right for instream flows in the intervening reach will not reduce the availability of water to intervening water users, provided Ecology only protects the consumptive use historically exercised. As stated in the previous section, few wells exist in the area of the proposed well identified in the preliminary permit, and the hydrogeologic analysis identified no interference with existing wells.

Under the criteria provided in the R.D. Merrill decision, a change in season of use requires a no impairment finding for the new period of use (i.e. October 1 to April 14 in this case). Use of the proposed well outside the historic season of use and at the new location could adversely impact flows in the Columbia River during this time period. Ecology can condition the change to prevent impairment. In this case, making the water right interruptible to the flows in WAC 173-563 would alleviate any impairment concerns.

However, because the proposed use for a public water system, reliance on an interruptible water right can affect system reliability and approvals from Department of Health (DOH). Ecology has developed a memorandum of understanding (MOU) with DOH to address water systems proposing to rely on water rights that are interruptible. The MOU calls for consultation between the agencies, coordinated approvals of water right decisions and water system planning documents, and potential options for mitigation.

Ecology followed the MOU and consulted with Tom Justus, regional engineer with DOH on this project. Ecology provided technical assistance to the applicant regarding the issue of interruptibility and system reliability. Under the MOU, Ecology's technical assistance should estimate if possible the risk of interruptibility. Table 3 summarizes the days of possible interruptibility based on 2001 drought flows (the only time the State's instream flow rule was triggered).

Table 3: Columbia River Instream Flows

Interruptible days in 2001	Minimum Instream Flow	Priest Rapids Flow
April 1-7	70	68.66
Oct 16-23	70	68.75
Oct 24-31	70	63.99
Nov 1-7	70	64.91

Based on this information, the applicant proposed mitigation for Ecology and DOH to consider. The applicant proposed to first reduce its use during periods of interruption to in-house use only (estimated based on DOH criteria at 200 gpd/ERU). The applicant also proposed to use only the 19 ac-ft/yr consumptive portion of the right being transferred from Eagle Creek until the project can measure and reliably demonstrate their non-consumptive use.

The applicant proposes to build the resort in phases. Phase 1 will include 145 residential units requiring 200 gpd. The resort must plan for an interruption of approximately 21 days from October 15 to November 7. Although interruption for 7 days could occur in April, the companion change application (CS4-23192) has an earlier season of use that can supply the 200 gpd/ERU during this period. Therefore, Phase 1 will require approximately 2 acre-feet per year to mitigate for its consumptive use during the full period of interruption.

The following list includes possible mitigation plans proposed by the applicant:

1. Execute a contract with an upstream municipal entity to deliver water to the Columbia River in the amounts calculated for mitigation of continuous withdrawals from the Vantage Bay well. This contract could be terminated only with DOH approval.
2. Store non-potable water on site to be discharged to the Columbia River in the same rate and timing as withdrawals during the period of interruptibility.
3. Acquire additional water right(s) for additional continuous use and consumptive quantities in the prescribed amounts for the system.
4. A combination of 1-3.

Public water systems are typically not 100% consumptive in their withdrawals because of domestic wastewater generation. Depending on the disposal method, water returns can be sizable. However, there is uncertainty regarding the magnitude and fate of wastewater returns for this project. While the 31.5 acre-feet of water was historically diverted and not consumed at the historic place of use, it is uncertain whether this water would be returned as part of this project. Allowing this water to be consumptively used for the new project could impair the State's instream flows adopted in WAC 173-563.

The applicant proposed to demonstrate their consumptive and non-consumptive water use by metering Phase 1. Upon approval and use of this change/transfer, the applicant may in the future provide data to demonstrate their water use patterns and the reliability of return flows up to 31.5 acre-feet. Actual data from the system as built, or any other compelling data can be the basis for revising mitigation and other provision requirements in consultation with Department of Health and Ecology. Ecology may approve use of the additional 31.5 ac-ft through an Administrative Order (see Provision No. 17).

The applicant has expressed plans to eventually build 165 more lots in Phase 2 (310 total). Phase 2 would also need mitigation for periods of interruption. Mitigation may rely on the same approaches listed above for Phase 1 as well as wastewater returns that are measured and determined by Ecology to be reliable in perpetuity through an Administrative Order.

Table 4: Summary of Applicant's Proposed Water Use

Water Right Change	Consumptive Use (Phase 1)	Non-Consumptive Use (Phase 2)	Total	Original Season of Use
Eagle Creek (CS4-ADJ73029)	19	31.5	50.5	April 15 to Sep 30
Monse (CS4-23192C)	33.4	5.9	39.3	April 1 to Oct 1
Total	52.4	37.4	89.8	

Public Interest Considerations

In considering whether the public interest would be adversely impacted by the transfer, Ecology considered several issues.

RCW 90.54.020(8) specifies that “development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged”. Approval of this public water system with a senior water right is preferable to development of the land through exempt wells.

In consultation with DOH and pursuant to our joint MOU, Ecology considered DOH rules on public water system reliability (WAC 246-290-420 (1) - (3)). Providing opportunities for the public to be served by a public water system with a mitigation plan that meets DOH’s criteria is in the public interest.

Even though the consumptive quantities of the project are small relative to fluctuations and flows in the Wanapum Pool of the Columbia River, the Columbia River Instream Flow Rule strives to set a precedence of managing flows for the prospect of future public interest concerns. Conditioning the new season of use to protect these flows is in the public interest.

County land use regulations provide an orderly manner for subdividing land. The applicant has received county approval and SEPA was completed for the project. The proposed development will serve residents in Kittitas County, which is a rapidly growing county in Washington.

Trust Water Calculation

RCW 90.42.080(1)(a) provides that the State may acquire water rights and when acquired such rights are trust water rights. The method of acquisition in this case is a conveyance from BCSCBN, Inc. to Ecology to ensure that water will be available for use at the new location downstream. Ecology’s protection of this water right in trust as a water right senior to that of the Wenatchee River instream flow rule, and junior water users regulated under that rule, will ensure that the water is delivered to the Columbia River adjacent to the proposed well location.

Ecology typically manages its trust water rights by defining a primary and a secondary reach. The primary reach is the length of the river between the historic diversion point and where any of the water diverted, but not consumed, returns to the river.

In this case, the location of the farm adjacent to Eagle Creek, the farming practices described herein, slopes, and the soil types results in no primary reach (i.e. any return flows enter the river on the property or immediately downstream).

The secondary reach is the portion of the river where Ecology protects water that was historically consumed by the crops. In this case, the secondary reach begins at the historic point of diversion and ends at the Columbia River adjacent to the proposed well site. The magnitude of water Ecology will manage in the secondary reach is the consumptive portion of the water right, or 19 acre-feet.

The 19 acre-feet can be distributed on a monthly basis similar to the way it was consumed by the crops, in this case, in proportion to the crop duty provided in the Washington Irrigation Guide (see Table 5 and the Extent and Validity section above). The instantaneous rate is calculated as a continuous diversion of the monthly volume.

Table 5: Trust Water Calculation

	June	July	August	September	Total
cfs	0.062	0.116	0.088	0.0471	
acre-feet	3.7	7.1	5.4	2.8	19

Consideration of Protests and Comments

No comments or protests were received regarding this change.

CONCLUSIONS

In accordance with RCW Chapters 90.03 and 90.44, the author of this report makes a tentative determination that Certificate No. S4-73029JWRIS(A) is a valid water right and is eligible for change. Water is available for the proposed use based on the conveyance of the water right to trust in the intervening reach. Approval of this change request as provisioned below will not cause impairment of existing water rights. Approval of this change request will not be detrimental to the public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request to change the place of use, purpose of use, season of use, and point of diversion, be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

- 158 gpm
- 50.5 ac-ft/yr
- For the purpose of community domestic supply

Point of Withdrawal

NE¼ Section 30, Township 17 North, Range 23 E.W.M.

Place of Use

As described on Page 1 of this Report of Examination.

Trust Water Right Attributes

0.116 cfs, 19 acre-ft/yr from April 15 to September 30 for instream flow purposes in the secondary reach as follows:

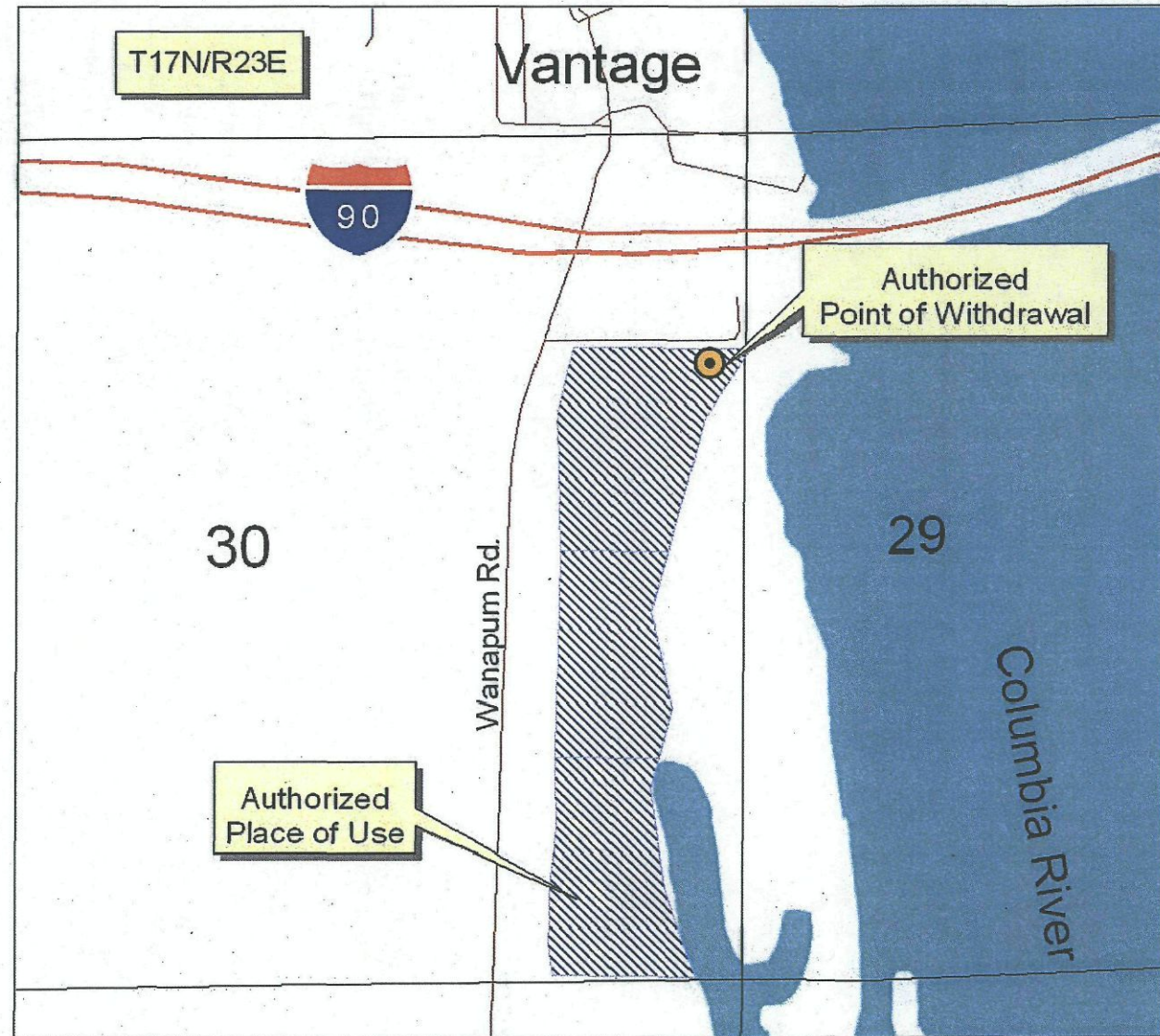
	June	July	August	September	Total
cfs	0.062	0.116	0.088	0.0471	
acre-feet	3.7	7.1	5.4	2.8	19

The secondary reach begins at the historic point of diversion on Eagle Creek 2.1 miles upstream of the confluence with Chumstick Creek. The secondary reach then extends 1.86 miles down Chumstick Creek to the confluence of the Wenatchee River and then 23.5 miles to the confluence with the Columbia River at River Mile 468.5. It then extends down the Columbia River 48.5 miles to the approximate location of the new point of withdrawal adjacent to the Columbia River at river miles 420, located in the NE¼ Sec. 30, T. 17 N., R. 23 E.W.M..

Report by: Kelsey Collins
Kelsey Collins, Water Resources Program

April 17, 2009
Date

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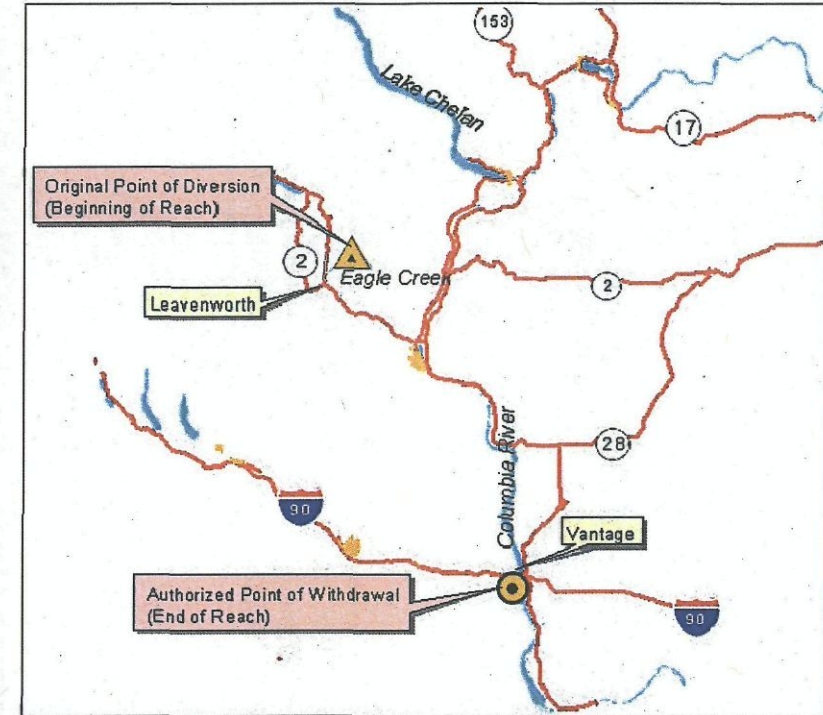
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Comments:

Place of use and points of withdrawal/diversions are as defined on the cover sheet under the heading 'LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED.'



BCSCBN Inc. CS4-ADJ73029
T. 17 N., R. 23 E., Sec. 30
WIRA 40, Kittitas County



20 0 20 40 Miles

- Roads
- Water Body
- Section lines
- Authorized Place of Use
- Original Point of Diversion
- Authorized Point of Withdrawal